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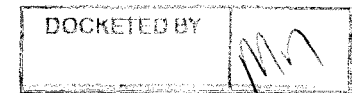
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Phoenix, Arizona 85012
4 Attorneys for Litchfield Park Service Company

Arizona Corporation Commission

DOCKETED

DEC 22 2009



6 **BEFORE THE ARIZONA CORPORATION COMMISSION**

8 IN THE MATTER OF THE APPLICATION
OF LITCHFIELD PARK SERVICE
9 COMPANY, AN ARIZONA
CORPORATION, FOR A
10 DETERMINATION OF THE FAIR VALUE
OF ITS UTILITY PLANTS AND
11 PROPERTY AND FOR INCREASES IN ITS
WASTEWATER RATES AND CHARGES
12 FOR UTILITY SERVICE BASED
THEREON.

DOCKET NO: SW-01428A-09-0103

13 IN THE MATTER OF THE APPLICATION
14 OF LITCHFIELD PARK SERVICE
COMPANY, AN ARIZONA
15 CORPORATION, FOR A
DETERMINATION OF THE FAIR VALUE
16 OF ITS UTILITY PLANTS AND
PROPERTY AND FOR INCREASES IN ITS
17 WATER RATES AND CHARGES FOR
UTILITY SERVICE BASED THEREON.

DOCKET NO: W-01427A-09-0104

18 IN THE MATTER OF THE APPLICATION
19 OF LITCHFIELD PARK SERVICE
COMPANY, AN ARIZONA
20 CORPORATION, FOR AUTHORITY (1) TO
ISSUE EVIDENCE OF INDEBTEDNESS IN
21 AN AMOUNT NOT TO EXCEED \$1,755,000
IN CONNECTION WITH (A) THE
22 CONSTRUCTION OF TWO RECHARGE
WELL INFRASTRUCTURE
23 IMPROVEMENTS AND (2) TO
ENCUMBER ITS REAL PROPERTY AND
24 PLANT AS SECURITY FOR SUCH
INDEBTEDNESS.

DOCKET NO. W-01427A-09-0116

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2009 DEC 22 / P 12:01
AZ CORP COMMISSION
DOCKET CONTROL

1 IN THE MATTER OF THE APPLICATION
2 OF LITCHFIELD PARK SERVICE
3 COMPANY, AN ARIZONA
4 CORPORATION, FOR AUTHORITY (1) TO
5 ISSUE EVIDENCE OF INDEBTEDNESS IN
6 AN AMOUNT NOT TO EXCEED \$1,170,000
7 IN CONNECTION WITH (A) THE
8 CONSTRUCTION OF ONE 200 KW ROOF
9 MOUNTED SOLAR GENERATOR
10 INFRASTRUCTURE IMPROVEMENTS
11 AND (2) TO ENCUMBER ITS REAL
12 PROPERTY AND PLANT AS SECURITY
13 FOR SUCH INDEBTEDNESS.

DOCKET NO. W-01427A-09-0120

**MOTION TO STRIKE TESTIMONY
OF MATT ROWELL**

8 Litchfield Park Service Company ("LPSCO" or "the Company") hereby moves to
9 strike and/or exclude any and all portions of the Direct Testimony of Matthew Rowell
10 ("DT") filed on November 4, 2009, and the Surrebuttal Testimony of Matthew Rowell
11 ("ST") filed on December 17, 2009, relating to design and construction errors at the Palm
12 Valley Water Reclamation Facility ("PVWRF"). Specifically, LPSCO moves to strike
13 and/or exclude pages 2-6 of Mr. Rowell's direct testimony and pages 13-17 of Mr.
14 Rowell's surrebuttal testimony relating to design and construction errors at PVWRF.¹

15 **I. BRIEF STATEMENT OF MOTION.**

16 LPSCO moves to exclude Mr. Rowell's testimony on those issues for the
17 fundamental reason that Mr. Rowell, by his own admission, is not qualified to offer any
18 opinions or testimony on design and construction issues at the PVWRF. Mr. Rowell is an
19 economist proffered by RUCO to offer opinions about alleged design and construction
20 flaws in the PVWRF as originally constructed.²

21 As the old saying goes, "where facts are few, experts are many." Here, Mr.
22 Rowell takes that credo to the extreme by opining that "there were significant design
23 problems at the PVWRF" and that "[c]orrecting these problems necessitated significant
24

25 ¹ See Rowell DT at page 2, line 21 to page 6, line 11; Rowell ST at page 13, line 17 to
26 page 17, line 3.

² Mr. Rowell's resume is attached as Exhibit 1.

1 upgrades.”³ Mr. Rowell ultimately concludes that “[w]e believe the costs of the PVWRF
2 upgrades necessitated by the PVWRF’s design problems should be shared between the
3 shareholders and the customers,” which “results in a disallowance of \$3.5 million of test
4 year plant additions.”⁴

5 To say the least, Mr. Rowell is not qualified or competent to offer such opinions as
6 an expert (or lay) witness. Even worse, all Mr. Rowell has done is review the testimony
7 of LPSCO’s witness (Greg Sorensen) and an engineering report prepared by McBride
8 Engineering Services (“MES”) and, in turn, Mr. Rowell then offers his interpretations of
9 that testimony and engineering report.⁵ By his own admission, Mr. Rowell simply
10 “restates” the testimony provided by Mr. Sorensen and the MES engineering report.

11 Incredibly, LPSCO provided rebuttal testimony from Mr. Sorensen and Brian
12 McBride, both stating that Mr. Rowell was misreading the pre-filed direct testimony and
13 the MES Report. Both Mr. McBride and Mr. Sorensen expressly stated that PVWRF did
14 not have any design errors as originally constructed.⁶ On surrebuttal, however, Mr.
15 Rowell continues to state his beliefs that there were design errors in the original plant.
16 Mr. Rowell simply does not have any foundation or qualifications to offer such opinions
17 at trial, or interpret another witness’s testimony on design and engineering issues.

18 In all candor, admission of Mr. Rowell’s proposed testimony would make a
19 mockery of the evidentiary hearing process before the Corporation Commission. Mr.
20 Rowell recommends a \$3,500,000 reduction in rate base based on his opinions that the
21 2007/2008 upgrades to PVWRF installed by LPSCO were the result of design errors in the

22
23 ³ Rowell DT at 4. *See also* Rowell ST at 13 (“RUCO believes it is inappropriate for
ratepayers to bear the full cost of upgrades necessitated by design and construction
errors.”).

24 ⁴ Rowell DT at 5.

25 ⁵ *See* Direct Testimony of Greg Sorensen at 7-8; Litchfield Park Service Company Water
Reclamation Facilities Strategic Planning and Evaluation Report prepared by McBride
Engineering Solutions (the “MES Report”), attached as Exhibit 4 to Rowell ST.

26 ⁶ Sorensen Rebuttal Testimony at 15-17; McBride Rebuttal Testimony at 4-6.

1 plant as originally built. The sole basis for Mr. Rowell's recommendations is nothing
2 more than his own interpretation of Mr. Sorensen's testimony and the MES Report. Mr.
3 Rowell is an economist; not an engineer, not a contractor and not an operator of a
4 treatment plant. Mr. Rowell has never inspected or visited the PVWRF, and he hasn't
5 reviewed any design or engineering plans. Allowing RUCO to present Mr. Rowell's
6 testimony on these issues at trial would constitute clear reversible error. It also will result
7 in unnecessary time and expense at hearing on issues for which Mr. Rowell isn't even
8 remotely qualified to offer opinions at trial.

9 LPSCO understands that Commission evidentiary proceedings are less formal than
10 Superior Court proceedings, but it bears emphasis that Mr. Rowell's proposed testimony
11 on the design issues wouldn't even be remotely admissible in Superior Court. Under Ariz.
12 Rev. Stat. § 12-2602(A), a party pursuing claims based on design or engineering errors
13 must "certify in a written statement that is filed and served with the claim whether or not
14 expert opinion testimony is necessary to prove the licensed professional's standard of care
15 or liability for the claim." In turn, the claimant also must provide a "preliminary expert
16 opinion affidavit," which shall contain at least the following information: "(1) The
17 expert's qualifications to express an opinion on the licensed professional's standard of care
18 or liability for the claim. (2) The factual basis for each claim against a licensed
19 professional. (3) The licensed professional's acts, errors or omissions that the expert
20 considers to be a violation of the applicable standard of care resulting in liability. (4) The
21 manner in which the licensed professional's acts, errors or omissions caused or contributed
22 to the damages or other relief sought by the claimant."⁷ By his own admission, Mr.
23 Rowell cannot meet those requirements for expert testimony on design issues relating to
24 the PVWRF.

25 The Administrative Law Judge should require Mr. Rowell to meet the fundamental

26 ⁷ Ariz. Rev. Stat. § 12-2602(B).

1 qualifications and foundation necessary for expert testimony to be admitted on these
2 design and engineering issues. Because Mr. Rowell can't meet those fundamental
3 standards for expert testimony, his testimony on the design issues must be excluded.

4 **II. MR. ROWELL'S TESTIMONY ON DESIGN AND CONSTRUCTION**
5 **ERRORS SHOULD BE EXCLUDED AS A MATTER OF LAW.**

6 A trial court should exclude an expert who does not have the "appropriate
7 experience, education or training to offer a helpful opinion with regard to controverted
8 issues."⁸ An expert's expertise and experience must "fit" the area of testimony.⁹ Further,
9 before expert testimony can be admitted, a court must determine "whether the expert is
10 proposing to testify to (1) scientific knowledge that (2) will assist the trier of fact to
11 understand or determine a fact in issue."¹⁰ This inquiry requires a two-part analysis:

12 First, we must determine nothing less than whether the experts' testimony
13 reflects "scientific knowledge," whether their findings are "derived by the
14 scientific method," and whether their work product amounts to "good
15 science." ... Second, we must ensure that the proposed expert testimony is
16 "relevant to the task at hand," i.e., that it logically advances a material
17 aspect of the proposing party's case. The Supreme Court referred to this
18 prong of the analysis as the "fit requirement."¹¹

19 If an expert's proposed testimony fails to meet either of these "reliability" or "relevance"
20 prongs, it should be excluded.¹² RUCO bears the burden of establishing that the pertinent
21 admissibility requirements are met by a preponderance of the evidence.¹³

22 ⁸ *Diviero v. Uniroyal Goodrich Tire Co.*, 919 F.Supp. 1353, 1355 (D. Ariz. 1996).

23 ⁹ *Id.* at 1357-58 citing *Perkins v. Volkswagen of Amer., Inc.*, 596 F.2d 681, 682 (5th Cir. 1979) (where a specialist in mechanical engineering with no experience with designing entire automobiles was prohibited from testifying as an expert in automotive design).

24 ¹⁰ *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 592 (1993); *see also Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 141 (1999) (holding that *Daubert* applies to testimony based on technical and other specialized knowledge).

25 ¹¹ *Daubert v. Merrell Dow Pharms., Inc.*, 43 F.3d 1311, 1315 (9th Cir. 1995) ("*Daubert II*") (citations omitted).

26 ¹² *See, e.g., United States v. Scholl*, 166 F.3d 964, 971 (9th Cir. 1999) (affirming exclusion of expert testimony as irrelevant); *Martinez v. Terex Corp.*, 241 F.R.D. 631, 641 (D. Ariz. 2007) (declining to address relevance of proposed expert testimony after finding that testimony to be unreliable).

¹³ *Martinez*, 241 F.R.D. at 635 (citing *Bourjaily v. United States*, 483 U.S. 171, 175 (1987)).

1 LPSCO anticipates that RUCO will argue that these issues bear on the weight of
2 Mr. Rowell's testimony or his credibility, not the admissibility of his testimony. But
3 weight and credibility issues only arise after a proposed expert meets the standards for
4 qualification as an expert witness. Where an opinion's factual basis, data, principles,
5 methods, qualifications or application are called into question, the court must determine
6 whether the opinion has "a reliable basis in the knowledge and experience of [the
7 relevant] discipline."¹⁴ This requires an expert to show that the expert's findings are
8 "based on sound science," requiring "some objective, independent validation of the
9 expert's methodology," and not mere "bald assurance of validity."¹⁵ Under Arizona Rule
10 of Evidence 702, "[i]f scientific, technical or other specialized knowledge will assist the
11 trier of fact to understand the evidence or determine a fact in issue, a witness qualified as
12 an expert by knowledge, skill, experience, training or education, may testify thereto in the
13 form of an opinion..."¹⁶

14 A. **Mr. Rowell Does Not Have Any Professional Qualifications To Offer**
15 **Testimony Relating to Design Errors at the PVWRF.**

16 RUCO has offered Mr. Rowell as an expert trial witness. Mr. Rowell is an
17 economist, who has presented testimony regarding alleged design and engineering errors
18 at the PVWRF. On these issues, Mr. Rowell's deposition testimony speaks for itself in
19 demonstrating why his testimony should be excluded as a matter of law:

20 Q. Okay. Let me rephrase that, then. Essentially, you've submitted direct
21 testimony on two issues in the rate case, the first issue being design and
22 construction problems at the Palm Valley Plant; correct?

23 A. That's correct....

24 Q. Mr. Rowell, you're an economist by training; correct?

25 A. That's correct.

26 Q. You're not a licensed contractor; agreed?

A. Agreed.

Q. Okay. You've never constructed a wastewater treatment plant; correct?

A. Correct.

¹⁴ *Kumho Tire Co.*, 526 U.S. at 149.

¹⁵ *Daubert II*, 43 F.3d at 316.

¹⁶ Ariz. R. Evid. 702.

1 Q. And you've never operated or worked at a wastewater treatment plant;
correct?

2 A. That's correct.

3 Q. Okay. And you're not certified as a qualified operator for a treatment
plant; agreed?

4 A. Agreed.

5 Q. You also haven't actually visited or inspected the Palm Valley Plant
that's owned and operated by LPSCO; correct?

6 A. That's correct.

7 Q. And you're not a registered engineer; correct?

8 A. That's correct.

9 Q. And you've never, in fact, engineered or designed a wastewater
treatment plant; correct?

10 A. That's correct.

11 Q. Okay. Have you ever actually looked at any engineering plans for a
wastewater treatment plant?

12 A. Not that I recall, no.

13 Q. And you didn't look at the engineering plans for the Palm Valley Plant
as it was originally constructed in 2003; correct?

14 A. That's correct.

15 Q. And you didn't look at any of the engineering plans for the 2008
upgrades that were installed at the Palm Valley Plant in 2008; agreed?

16 A. Agreed.¹⁷

17 That deposition testimony unequivocally establishes that Mr. Rowell isn't qualified to
18 give any opinions or testimony regarding alleged design errors at PVWRF as originally
19 constructed. Clearly, Mr. Rowell doesn't have any foundation for opining that the
20 PVWRF had design errors as originally constructed.

21 Even Mr. Rowell admits that he is **not** qualified:

22 Q. Okay. Mr. Rowell, given that you're not a certified engineer, you're not
a licensed contractor and you're not a certified operator, wouldn't you agree
23 with me that you don't have any qualifications to give opinions
regarding design errors at the Palm Valley Plant?

24 A. I don't believe I've offered any independent opinions about design
errors at the Palm Valley Plant.

25 Q. Okay. What have you offered with respect to design errors at the Palm
Valley Plant if you haven't offered independent opinions?

26 A. Regarding the design errors, I've merely taken the opinions expressed
by Mr. Sorensen in his testimony.

Q. So in other words, all you've done is basically repeat Mr. Sorensen's
testimony on what you view as design errors at the plant; agreed?

A. That, along with reading the -- I think the MES report on those issues.

Q. So in other words, **Mr. Rowell -- and correct me if I'm wrong here --**

¹⁷ Deposition Transcript for Matt Rowell dated November 30, 2009 at 10-14 (attached as Exhibit 2).

1 *but essentially what you're saying is that all you've done in your testimony*
2 *on the design and construction errors is restate Mr. Sorensen's testimony*
3 *and restate the statements from the McBride Engineering Report; fair?*

4 *A. That's fair.*

5 *Q. Okay. And you haven't formed any independent opinions of your*
6 *own with respect to any design or construction problems at the plant;*
7 *agreed?*

8 *A. That's true, yes.*

9 *Q. And, in fact, you wouldn't have any qualifications to render any*
10 *opinions about design or construction problems at the plant; agreed?*

11 *A. Agreed, yes.*

12 *Q. And that's because you're an accountant and not a contractor, engineer*
13 *or operator of a wastewater treatment plant; fair?*

14 *A. That's fair enough, yes.*¹⁸

15 Mr. Rowell admits that he is not an engineer and does not have any expertise in
16 wastewater treatment plant design, engineering or construction. He has no personal
17 experience with the PVWRF and he has done nothing more than interpret the testimony of
18 Mr. Sorensen, Mr. McBride and the MES Report. His testimony is premised on nothing
19 other than personal beliefs about design problems with the PVWRF and it lacks any
20 foundation or support. Mr. Rowell is simply telling the Commission what he personally
21 thinks about something he otherwise knows nothing about. If the Administrative Law
22 Judge allows Mr. Rowell to testify under these circumstances, then all evidentiary rules
23 and requirements will be rendered meaningless.

24 **B. Mr. Rowell's Testimony Is Inherently Unreliable and Lacks Any**
25 **Foundation Whatsoever.**

26 An economist is not qualified to interpret witness testimony or an engineering
report about whether there were any design and engineering errors at the plant.¹⁹ As a
result, Mr. Rowell's testimony is really nothing more than legal argument by RUCO for a
reduction in LPSCO's rate base. By law, "testimony regarding ultimate issues has been
excluded because it told the [fact finder] how to decide the case or was otherwise

¹⁸ Rowell Depo. Tr. at 14-15 (emphasis added).

¹⁹ It also should be noted that the evidence is undisputed that the PVWRF as designed and
constructed in 2002 met all applicable design and engineering standards.

1 unhelpful, and therefore excludable under Rule 702.”²⁰ “Such testimony is inadmissible
2 because it provides no information to the trier of fact except what the verdict should
3 read.”²¹ Allowing RUCO or any party to present this type of unsupported and
4 unqualified opinion evidence at trial violates clear Arizona law and fundamental
5 principles of due process.

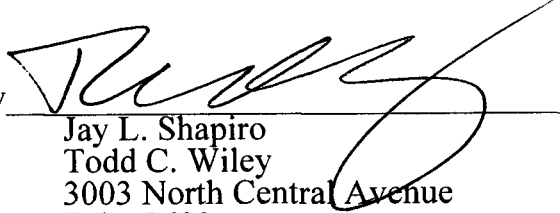
6 **III. CONCLUSION.**

7 For the reasons noted above, the Administrative Law Judge should issue an order
8 striking and/or excluding any and all portions of the Direct Testimony of Matthew Rowell
9 filed on November 4, 2009, and the Surrebuttal Testimony of Matthew Rowell filed on
10 December 17, 2009 relating to design and construction errors at the PVWRF.
11 Specifically, pages 2-6 of Mr. Rowell’s direct testimony and pages 13-17 of Mr. Rowell’s
12 surrebuttal testimony relating to design and construction errors at PVWRF should be
13 excluded and stricken by law.

14 DATED this 22 day of December, 2009.

15 FENNEMORE CRAIG, P.C.

16
17 By


Jay L. Shapiro
Todd C. Wiley
3003 North Central Avenue
Suite 2600
Phoenix, Arizona 85012
Attorneys for Litchfield Park Service
Company

25 ²⁰ *Webb v. Omni Block, Inc.*, 216 Ariz. 349, 353, 166 P.3d 140, 144 (App. 2007), citing
26 *Owen v. Kerr-McGee Corp.*, 698 F.2d 236, 240 (5th Cir. 1983).

²¹ *Webb v. Omni Block, Inc.*, 216 Ariz. at 353, 166 P.3d at 144.

1 **ORIGINAL** and nineteen (19) copies
2 of the foregoing were filed
3 this 22 day of December, 2009, with:

4 Docket Control
5 Arizona Corporation Commission
6 1200 W. Washington St.
7 Phoenix, AZ 85007

8 **COPY** of the foregoing hand-delivered
9 this 22 day of December, 2009 to:

10 Dwight Nodes
11 Assistant Chief Administrative Law Judge
12 Hearing Division
13 Arizona Corporation Commission
14 1200 West Washington
15 Phoenix, Arizona 85007

16 Kevin Torrey, Esq.
17 Legal Division
18 Arizona Corporation Commission
19 1200 West Washington
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21 Michelle Wood, Esq.
22 RUCO
23 1110 W. Washington St., Suite 220
24 Phoenix, Arizona 85007

25 **COPY** of the foregoing mailed
26 this 22 day of December, 2009 to:

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Chad and Jessica Robinson
15629 W. Meadowbrook Ave.
Goodyear, Arizona 85395

By: Mary House
2263076.1/60199.009

1

Qualifications of Matthew Rowell

Professional History

Desert Mountain Analytical Services, PLLC 2007 – Present

Member

Prepare testimony and analysis for utilities regarding regulatory issues. Most recently I prepared and sponsored testimony on behalf of Global Water regarding their multi-system rate case, Docket No. W-20446A-09-0080 and their Notice of Intent to Restructure, Docket No. W-20446A-08-0247.

Arizona Corporation Commission 1996 to 2007

Chief Economist (July 2001 to February 2007)

Was responsible for supervising a staff of nine professionals who analyzed and produced testimony or staff reports on a wide variety of energy and telecommunications issues. Recent cases for which I provided testimony myself include:

APS Rate Case E-01345A-05-0816: Provided testimony on staff's position on APS' proposed Environmental Improvement Charge. I also acted as the overall case manager and was responsible for coordinating all of staff's testimony.

APS Application to acquire a power plant in the Yuma area E-01345A-06-0464: Provided testimony in support of APS' application. Interveners in this case raised a variety of complex issues that needed to be addressed.

Southern California Edison's application to build a high voltage power line linking Arizona to Southern California L-00000A-06-0295-00130: Provided testimony detailing the potential economic effects of SCE's proposed power line.

Accipiter's complaint against Cox Communications regarding the Vistancia development T-03471A-05-0064: Provided written testimony regarding Accipiter's allegations concerning Cox's dealings with the developers of Vistancia.

Significant past responsibilities included managing staff's case (including negotiating a settlement agreement) in APS' 2003 rate case, negotiating the settlement between staff and Qwest regarding three enforcement dockets, supervising the "independent monitor" of APS' and Tucson Electric Power's (TEP) wholesale power procurement, providing testimony on Qwest's noncompliance with the Commission's wholesale rate order, managing staff's case regarding Qwest's alleged noncompliance with the Federal Telecommunications Act, and acting as staff's lead witness in the Commission's reevaluation of the electric competition rules which resulted in the suspension of APS' and TEP's obligation to divest their generation assets.

Economist (October 1996 to July 2001)

Significant responsibilities included supervising the testing of Qwest's operational support systems (OSS), analyzing Qwest's compliance with Section 271 of the Federal Telecommunications Act, providing testimony on the geographic de-averaging of Qwest's Unbundled Network Element prices, and acting as Chairman of the Commission's Water Task Force.

Arizona Department of Transportation, Phoenix, AZ 1996, 1998, and 1999

Research Analyst

Authored research reports on the costs and benefits of traffic demand management policies, the relative merit of various highway-financing techniques, and air pollution reduction technologies.

Arizona State University, Tempe, AZ 1992-1996.

Lecturer-economics 1994-1996

Responsible for teaching microeconomics classes requiring the creation of lectures and tests as well as full responsibility for assigning grades.

Teaching assistant 1992-1994

Responsible for assisting professors in administering tests, grading, and teaching.

Education

Master of Science and ABD Economics, 1995, Arizona State University.

I have successfully completed all course work and exams necessary for a Ph.D. Course work included an emphasis in industrial organization and extensive experience with statistical analysis, public sector economics, and financial economics.

Bachelor of Science Economics, 1992, Florida State University.

Minors: Philosophy, Statistics

2

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE) No. SW-01428A-09-0103
APPLICATION OF LITCHFIELD PARK)
SERVICE COMPANY, AN ARIZONA)
CORPORATION, FOR A)
DETERMINATION OF THE FAIR)
VALUE OF ITS UTILITY PLANTS)
AND PROPERTY AND FOR INCREASES)
IN ITS WATER AND WASTEWATER)
RATES AND CHARGES FOR UTILITY)
SERVICE BASED THEREON.)

IN THE MATTER OF THE) No. W-01427A-09-0104
APPLICATION OF LITCHFIELD PARK)
SERVICE COMPANY, AN ARIZONA)
CORPORATION, FOR A)
DETERMINATION OF THE FAIR)
VALUE OF ITS UTILITY PLANTS)
AND PROPERTY AND FOR INCREASES)
IN ITS WATER AND WASTEWATER)
RATES AND CHARGES FOR UTILITY)
SERVICE BASED THEREON.)

DEPOSITION OF MATTHEW ROWELL

Phoenix, Arizona
November 30, 2009
9:15 a.m.

REPORTED BY:

CHRISTINE A. CHAMBERLAIN, RPR
Certified Reporter
Certificate No. 50741

PREPARED FOR:

ASCII/COPY

1 MR. WILEY: Okay.

2 MS. WOOD: So -- but if you have something
3 for me to look at, I'd be happy to look at it.

4 MR. WILEY: Let me make a representation to
5 you, Michelle. Mr. Rowell is an outside testifying expert
6 witness. There is no work product or privilege that applies
7 to him. Okay? I wasn't planning on asking too much. I
8 just generally wanted to know what you guys discussed in
9 preparation for the deposition today.

10 I will also tell you that that's asked of
11 every expert witness that testifies in almost all civil
12 cases is you ask them who they met with, what they
13 discussed, what documents they reviewed.

14 MS. WOOD: I don't have a problem with you
15 asking him who he met with. I don't have a problem with you
16 asking what documents he reviewed to prepare for this. But
17 the words out of my mouth, I believe, are attorney-client
18 privilege, because he is retained by my client to provide
19 consultation and testimony.

20 MR. WILEY: Okay. So that's the basis for
21 your objection on the record; is that fair?

22 MS. WOOD: It is at this juncture. I will
23 look over anything that you have that demonstrates your
24 viewpoint and modify it if I review it and determine that it
25 needs to be done. So --

1 MR. WILEY: Okay.

2 BY MR. WILEY:

3 Q. Mr. Rowell, you've submitted direct testimony on
4 behalf of RUCO in the rate case; correct?

5 A. Correct.

6 Q. Okay. Let me show you what I'll have the court
7 reporter mark as Exhibit 1.

8 (Deposition Exhibit No. 1 was marked for
9 identification.)

10 BY MR. WILEY:

11 Q. Looking at Exhibit No. 1, Mr. Rowell, Exhibit
12 No. 1 is your direct testimony submitted on your behalf for
13 RUCO in the rate case; correct?

14 A. It does appear to be, yes.

15 Q. Okay. And you've essentially been asked to
16 submit testimony on two issues in the rate case, the first
17 issue being design and construction problems at the Palm
18 Valley Water Reclamation Plant; correct?

19 A. I don't know if that's technically correct, no.

20 Q. Okay. What's not correct about that?

21 A. You said I've been asked, and I don't think --

22 Q. Okay. Let me rephrase that, then.

23 Essentially, you've submitted direct
24 testimony on two issues in the rate case, the first issue
25 being design and construction problems at the Palm Valley

1 Plant; correct?

2 A. That's correct.

3 Q. And the second issue is opinions regarding the
4 allocation of affiliate operating expenses and costs to
5 LPSCO; correct?

6 A. I believe there's more than just opinions, but
7 correct.

8 Q. Okay. And those are the only two issues raised
9 in your direct testimony in terms of specific opinions or
10 testimony from you; correct?

11 A. That's correct.

12 Q. Mr. Rowell, you're an economist by training;
13 correct?

14 A. That's correct.

15 Q. You're not a licensed contractor; agreed?

16 A. Agreed.

17 Q. Okay. You've never constructed a wastewater
18 treatment plant; correct?

19 A. Correct.

20 Q. And you've never operated or worked at a
21 wastewater treatment plant; correct?

22 A. That's correct.

23 Q. Okay. And you're not certified as a qualified
24 operator for a treatment plant; agreed?

25 A. Agreed.

1 Q. You also haven't actually visited or inspected
2 the Palm Valley Plant that's owned and operated by LPSCO;
3 correct?

4 A. That's correct.

5 Q. And you're not a registered engineer; correct?

6 A. That's correct.

7 Q. And you've never, in fact, engineered or designed
8 a wastewater treatment plant; correct?

9 A. That's correct.

10 Q. Okay. Have you ever actually looked at any
11 engineering plans for a wastewater treatment plant?

12 A. Not that I recall, no.

13 Q. And you didn't look at the engineering plans for
14 the Palm Valley Plant as it was originally constructed in
15 2003; correct?

16 A. That's correct.

17 Q. And you didn't look at any of the engineering
18 plans for the 2008 upgrades that were installed at the Palm
19 Valley Plant in 2008; agreed?

20 A. Agreed.

21 Q. Okay. Mr. Rowell, given that you're not a
22 certified engineer, you're not a licensed contractor and
23 you're not a certified operator, wouldn't you agree with me
24 that you don't have any qualifications to give opinions
25 regarding design errors at the Palm Valley Plant?

1 A. I don't believe I've offered any independent
2 opinions about design errors at the Palm Valley Plant.

3 Q. Okay. What have you offered with respect to
4 design errors at the Palm Valley Plant if you haven't
5 offered independent opinions?

6 A. Regarding the design errors, I've merely taken
7 the opinions expressed by Mr. Sorensen in his testimony.

8 Q. So in other words, all you've done is basically
9 repeat Mr. Sorensen's testimony on what you view as design
10 errors at the plant; agreed?

11 A. That, along with reading the -- I think the MES
12 report on those issues.

13 Q. So in other words, Mr. Rowell -- and correct me
14 if I'm wrong here -- but essentially what you're saying is
15 that all you've done in your testimony on the design and
16 construction errors is restate Mr. Sorensen's testimony and
17 restate the statements from the McBride Engineering Report;
18 fair?

19 A. That's fair.

20 Q. Okay. And you haven't formed any independent
21 opinions of your own with respect to any design or
22 construction problems at the plant; agreed?

23 A. That's true, yes.

24 Q. And, in fact, you wouldn't have any
25 qualifications to render any opinions about design or

1 construction problems at the plant; agreed?

2 A. Agreed, yes.

3 Q. And that's because you're an accountant and not a
4 contractor, engineer or operator of a wastewater treatment
5 plant; fair?

6 A. That's fair enough, yes.

7 Q. Okay. In your testimony you raise issues about
8 design -- alleged design and construction problems at the
9 plant. Tell me specifically on what basis you are giving
10 testimony about the design and construction problems at the
11 plant.

12 A. I don't understand what you mean by "basis."

13 Q. Let me rephrase it this way. What are you
14 relying on in giving your opinions about the design and
15 construction problems at the plant?

16 A. Again, I don't believe I've given my opinions
17 about the design and construction errors at the plant.

18 Q. Do you have any opinions about the design and
19 construction errors at the plant?

20 A. Well, the evidence that I've reviewed indicates
21 that there are design and construction problems at the
22 plant.

23 Q. Okay. What design and construction problems are
24 there at the plant? Tell me specifically.

25 A. I'd need a copy of the McBride report to -- I

1 don't remember the details off the top of my head.

2 Q. Would it be fair to say that the only things
3 you're relying on for your opinions about the design and
4 construction problems at the plant are Mr. Sorensen's
5 testimony and the McBride report; correct?

6 A. That's fair, yes.

7 Q. And you already answered that --

8 A. I believe I did.

9 Q. -- correct?

10 A. Yes.

11 Q. Okay. Remember to let me finish or we'll --

12 A. Sorry.

13 Q. -- talk over one another. You did it right
14 there, too.

15 If Mr. Sorensen, in his rebuttal testimony,
16 comes back and clarifies what he was saying about the design
17 and construction problems at the plant, you would have to
18 agree with what he restates on rebuttal testimony; agreed?

19 MS. WOOD: Objection. Speculation. We don't
20 know what he's going to say, and we don't know whether or
21 not we would agree with that.

22 BY MR. WILEY:

23 Q. If -- well, go ahead and answer the question.

24 A. I can't speculate on -- you know, without
25 actually seeing the testimony, I can't answer that question.